

Notice of Allowability

Application No.

10/005,195

Examiner

Donald Heckenberg

Applicant(s)

TAKAGI, KYOZABURO

Art Unit

1722

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to _____.
2. The allowed claim(s) is/are 1-12 and 20 (renumbered as 1-13).
3. The drawings filed on _____ are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

5. Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) The translation of the foreign language provisional application has been received.
6. Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) hereto or 2) to Paper No. _____.
 - (b) including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____
3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____	7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment
4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance
	9 <input type="checkbox"/> Other

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1. The following restriction requirement was made in the case:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-12 and 20 drawn to a rustication apparatus, classified in class 249, subclass 134.

II. Claims 13-16, drawn to a method of manufacturing a precast panel, classified in class 264, subclass 154.

III. Claims 17-19, drawn to a method of producing a rustication, classified in class 264, subclass 638.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another

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and materially different process such as a process wherein the rustication is pressed into poured concrete rather than placing the rustication on a panel forming surface with concrete subsequently poured around the rustication.

Inventions Group II and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group III has separate utility such as being used with a panel forming process wherein the rustication is pressed into poured concrete rather than placing the rustication on a panel forming surface with concrete subsequently poured around the rustication. See MPEP § 806.05(d).

Inventions Group III and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the rustication as claimed could be made by another and materially different process such as a process wherein the rustication is formed in a intermediate shape, and

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then formed into its final shape by a subsequent molding process.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation between Examiner Michael Poe and John Reed (Applicant's Representative) on January 15, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12 and 20.

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John Reed (Applicant's Representative) on January 22, 2004.

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IN THE CLAIMS

Claims 13-19 have been cancelled.

IN THE SPECIFICATION

On p. 5, between lines 18-19 the following sentences has been added:

--Fig. 1C illustrates a cut-away view of the rustication of Fig. 1B placed on an uneven surface.--

DRAWINGS

The following changes to the drawings have been approved by the examiner and agreed upon by Applicant:

The first sheet of the drawings has two figures labeled as "1B." The figure showing rustication labeled as 1a must be relabeled as Figure 1C. Also, figures 1A-1C must be labeled as prior art.

In order to avoid abandonment of the application, Applicant must make these above agreed upon drawing changes.

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6. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to teach or suggest an elongated body with the features defined in claims 1, 7-8, and 20. The closest prior is disclosed by Eyring et al. (U.S. Pat. No. 6,279,868; previously of record), Shaw et al. (U.S. Pat. No. 6,082,074), and Dashew (U.S. Pat. No. 3,632,078). Eyring discloses a rustication with a downward-extending edges that project below a base plane defined by the device (see figure 2). Similarly, Dashew discloses a rustication-type device with downward extending edges that project below a base plane defined by the device (figure 3). However, both Eyring and Dashew fail to teach or suggest the rustications to comprise an elongated body of extruded foam. Shaw discloses concrete forms (12, 14, 16, and 18) made from foam (col. 3, ll. 8-13). However, the form does not comprise at least one downward extending edge to create the sealing engagement with a panel forming surface as defined in claims 1 and 8, create the splay defined in claim 7, or create the sealing edge plane defined in claim 20. Moreover, the apparatus taught by Eyring and Dashew comprise components internal rib structures (39 in Eyring, 42 and 44 in Dashew) that would not allow for adaptation of Shaw's foam body without non-obvious modifications.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Donald Heckenberg
January 23, 2004


ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300 / 1700

1/23/04